

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,
Plaintiff and Appellant,
v.
NESTOR MAURICIO FERRER,
Defendant and Respondent.

A124178

(Mendocino County Super. Ct.
No. SC-UK-CR-CR 08-84982)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on May 14, 2010, be modified as follows:

At the end of the first paragraph commencing at the bottom of page 10 with “While the Legislature,” and ending at the top of page 11 with “right to a fair trial . . .”, add as footnote 6 the following footnote:

⁶ This court need not decide under what circumstances grant of a continuance or a prosecutor’s bad faith in requesting a continuance would violate a defendant’s right to a fair trial. (See *Henderson, supra*, 115 Cal.App.4th at p. 940.) In the present case, defendant has not argued that he would have suffered prejudice to his right to a fair trial had the trial court granted the requested continuance of the hearing on the motion to suppress, scheduled approximately two months before trial. We reject defendant’s request that we remand with directions to the trial court to consider whether the prosecutor acted in bad faith, because defendant has not argued that any prosecutorial bad faith impacted his right to a fair trial.

There is no change in the judgment.

Appellant's petition for rehearing is denied.

Dated: _____, P.J.